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CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1942.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

DEBTOR.

No. 13

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP,

Appellant,

vs.

ISRAEL A. ABRAMS, ET AL.,

Appellees.

(Consolidated with Numbers 11-19, 32.)

PETITION FOR REHEARING and MOTION FOR LEAVE TO SUPPLEMENT THE RECORD.

MEYER ABRAMS,
Counsel for Israel A. Abrams, et al., Adjustment Mortgage Bondholders, Respondents.

SHULMAN, SHULMAN & ABRAMS,
134 N. La Salle St.,
Chicago, Illinois,
Of Counsel.

Dated: April 5, 1942.

Supreme Court of the United States

OCTOBER TERM, 1942.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

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GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP,

Appellant,

vs.

ISRAEL A. ABRAMS, ET AL.,

Appellees.

(Consolidated with Numbers 11-19, 32.)

PETITION FOR REHEARING.

Israel A. Abrams, *et al.*, (Appellees in case No. 13), Adjustment Mortgage Bondholders, hereby petition for a rehearing for the following reasons:*

I. This court approved the plan which allowed interest to all secured creditors up to the effective date January 1, 1939, and denied $79,000,000 in accrued interest on the Adjustment Mortgage Bonds to such date on the ground that the Commission determined that the mortgaged assets were insufficient "to meet the interest" on these bonds, and

* There is annexed hereto a motion for leave to supplement the record by certain exhibits in connection with the petition for rehearing and the petition will, therefore, refer to such exhibits.

because of the "inadequacy of the free assets to satisfy the deficiency" in excess of $55,000,000 on the principal and interest up to July 1, 1935, based on the capitalization which constituted a finding as to valuation.

At the date when the Commission made the findings the total book assets were $757,140,033 (R. 2165). Such assets were found to be valued, according to the capitalization, at $548,533,321, and that left a deficiency on the Adjustment Mortgage Bonds, after the allowance of the 1,749,429 shares, of $55,471,653 exclusive of the $79,000,000 interest accrued to the effective date.

We have attached as Exhibit "C" the balance sheet of January 31, 1943, showing book assets of $848,865,840.79. The increase over the assets of $757,140,033 upon which the capitalization of $548,533,321 was based, *amounts to $91,725,807.79.* This includes an increase in the *cash* from $10,005,020 to $58,088,427.74, and an increase in the "*current assets*" from $29,801,024 to $97,123,860. This change was evidently brought about by the *increased revenue* over the "normal year" estimated at $15,894,000.

While there was no sufficient showing of changed conditions by reason of war conditions to affect the "normal year" on which to speculate on the increase in the capitalization, as held by this Court, the *changed conditions do show* an *actual increase* in assets amounting to $91,725,807.79. *This warrants an allotment of additional stock to the Adjustment Mortgage Bondholders* for $79,000,000 in interest which they were denied because of the 1938 deficiency in assets.

There being now available sufficient assets to pay the $79,000,000 interest from the *actual earnings*, as distinguished from speculative earnings, and the Adjustment Mortgage Bondholders being secured creditors to the same extent as the other creditors, it follows that the effective date of the plan should also be applicable to them.

The approval of the plan was reversed below, and the assets were increased prior to the approval of the plan by this court, and the entire matter is *interlocutory*, as the matter was not yet submitted to the creditors for their approval. Therefore, this court may take into consideration the changed conditions not for speculative purposes as to the effect of the earnings on the "normal year", but as to the actual value by reason of factual increase of the assets.

II. The principle announced in the opinion that where senior creditors are allotted only the face amount of their claims in inferior securities they must receive, in addition, compensation for the senior rights which they surrender, should apply with equal force to the Adjustment Mortgage Bondholders who are surrendering *their* senior position as *secured* creditors in favor of *general* creditors.

If it should be determined under the remandment that the General Mortgage Bonds have no lien on the "pieces of the lines east" by reason of "the after acquired property clause" and that the "50-year Bonds" have a *first* lien on such property, then the Adjustment Mortgage Bonds would have the *second* lien. The General Mortgage Bonds would then be *inferior to them as to such property.* The surrender of *the senior position* of the "Adjustments" in favor of the "Generals" *as to such property* would entitle them to *additional compensation* under the rule announced in this case. A determination of this issue must, therefore, *await* the determination of the controversy of the lien rights of the respective parties under the remandment order.

In discussing the lien of the Adjustment Mortgage Bonds the opinion stated "these bonds have the most junior lien on both the lines west and east of the Missouri River". This statement is *inconsistent with the conclusion* reached in the opinion that it is necessary to deter-

mine between the General Mortgage Bonds and the 50-year Mortgage Bonds whether the "after acquired clause" in the General Mortgage Trust Indenture created a lien on the "pieces of the lines east" or whether the 50-year Mortgage Bonds have a first mortgage thereon. If it should be determined that the "after acquired property clause" did not create a lien in favor of the General Mortgage Bonds, *then the Adjustment Mortgage Bonds have the next junior lien.* They would, therefore, stand *superior* to the rights of the General Mortgage Bonds.

This court remanded the cause on the issue whether the so-called "pieces of lines east" are subject to the prior lien of the "Generals" or to the lien of "50-year Bonds" because in 1936 they produced "a net income of $170,100". The net income for the year 1942 was $2,246,302 (See Exhibit "E" attached). It, therefore, is of great importance to the "Adjustments" if it should be determined that the "Generals" have no lien thereon and that the "Adjustments" stand in a *superior* position.*

III. Bearing in mind the rule that where senior security creditors accept junior securities for the face amount of their senior securities they are entitled to additional compensation for the surrender of their senior position, the Adjustment Mortgage Bondholders who stand in a *senior* position to the *general* creditors and who surrender their senior rights by accepting common stock in exchange for their creditors' position, are entitled to additional compensation insofar as it relates to the "free assets". The objection was made below (R. 1383) and in the Court of Appeals (R. 2006). The Trial Court failed to consider this point (R. 1891) and the Court of Appeals merely reversed the order as to these Appellees without discussing this point.

* The rule announced in this opinion that the minority cannot be deprived of benefits of reorganization statutes by reason of a waiver, acquiescence or approval by other members of the class should be considered in connection with this point.

The determination in this case that the finding of the aggregate securities which may be issued under the plan is equivalent to a finding that such securities represent the value of the railroad, rests on the proposition that the *stated* value of $100 per share of the new no par value common stock was the value of the free assets, so that the allotment of the 55,000 shares for the "free assets" fixed the value of such assets at $5,500,000. Such a valuation is *contrary* to the record.

It appears from the record (R. 2165) that at the date of the filing of the petition the debtor had *"cash"* on hand in the amount of $6,014,531 and *"current assets"* of $23,819,018, a total of $29,833,549. At the effective date of the plan it had *$10,005,020 in cash* and "current assets" of $29,801,024, making a total of $39,806,044.* While there may be a question whether the increase in the cash position and in the current assets from the date of the filing of the petition to the effective date may be considered as "free assets", on the theory that the filing of the petition prevented the mortgagees from exercising their rights to sequestration, *there is no dispute that the cash and the current assets at the date of the filing of the petition are to be treated as "free assets".*

It is to be noted that when the Commission allotted 55,000 shares for "free assets" *it did not consider the cash on hand and current assets among the free assets.* It only considered as "free assets" (R. 2174-5) *the investments of the debtor in certain subsidiaries.* For such "free assets" it allotted the 55,000 shares valued at $5,500,000. What about the cash and current assets of $29,833,549? Such free assets were not included in the valuation of $5,500,000 for which the 55,000 shares were allotted.

We are not unmindful that as against the "current

*The cash as of January 31, 1943 is $58,088,423.74 and the current assets are $97,123,860, as shown on the attached Schedule, making a total of $155,212,283.7"

assets" there were also "current liabilities" in the amount of $23,949,957. However, *these current liabilities included* "matured interest", $3,484,194.46; "funded debts matured", $4,740,899.50, and "unmatured interest accrued", $2,603,102.56, totaling $10,828,196.52. Provision was made for these items in the reorganization plan, and these should be deducted from the cash and current assets. This leaves a *net* of cash and current assets of $19,005,352.48 as "free assets" at the date of the filing of the petition, exclusive of the other free assets for which the Commission allowed the 55,000 shares. Therefore, the Adjustment Mortgage Bonds are entitled to additional shares.

IV. Point B III (a) of our brief (pp. 41-43) was also overlooked. We have there shown that Section 77(e) provided that "if it shall be necessary to determine the value of any property for any purpose under this section the Commission shall determine such value and certify the same to the court in its report on the plan." Here, *findings* and not "reasons" are required. The statement of this court that "Congress has required no more" than "reasons" is contrary to the Statute which required findings when "necessary". We, therefore, ask this court to reexamine the argument in our brief on this point and also the argument at pages 31-35 of our brief where we have shown that the "findings" were "necessary".

V. The opinion of this court (63 S. Ct. 727) states (p. 739):

> "But it is suggested that the vice of the Commission's plan is the formulation of a capital structure which as a result of conversion of debt into stock so increases the impact of mounting taxes on the company as to deprive junior interests of net earnings which would be available for distribution to them if the ratio of debt to stock were increased. Such a conversion of debt into stock is said to be entirely unnecessary to the formulation of a second plan and re-

sults in unfairness to junior interests. The difficulty with that argument is that Congress has entrusted the Commission not the courts with the responsibility of formulating a plan of reorganization which 'will be compatible with the public interest'."

The Commission could not have foreseen the tremendous impact of taxes on the Debtor's estate when the property passes to the custody of the reorganized company because the present tax law was *not in existence* when it adopted the plan.

It is not in the public interest to completely change the position of mortgage creditors to stockholders in order to saddle the tax burden on the latter whereby the stock which is given in exchange of the secured debt can never receive any dividends because of the change in the position from secured creditor to a common stockholder.

The matter of taxes is an element for consideration by the Commission, as was pointed out by this Court, in determining a plan of reorganization compatible with "public interest" as well as with all private interests. The Commission *had no opportunity to consider the question as reflected by the changed conditions* consisting of largely increased earnings and change in tax rate. The proceedings should be remanded to the Commission for further consideration of the tax problem, as the present plan of reorganization is no longer feasible when considered under present tax laws.

IV. This court overlooked Point A III (c) of appellees' brief (pp. 22-24) on the point that while a *voluntary trust* may be created by the *parties*, it is against the public policy and contrary to the law to establish an *involuntary trust* whereby the minority is *coerced* to become a party to a trust. The brief cited authorities (p. 21) in support of the contention that *it is the policy of the law that "an untrammeled power to vote shall be incident to the owner-*

ship of stock" and that "a contract by which the real owner's power is hampered by a provision therein that he shall vote just as somebody else dictates" is *not* in conformity with public policy. We also cited *Lebus* v. *Stanisfer* (p. 24) on the point that while courts have upheld voting trusts when *voluntarily entered* into there can be no *involuntary* trusts. There, the court said:

> "* * * We are aware of no instance where individual rights have been so far abridged as to hold that a stockholder's shares may without his consent be placed in such a trust either by a charter provision or otherwise, and be deprived completely of their control, even upon the ground that it was for his own as well as for the general good. It is well grounded in our fundamental law that there is no limitation upon one's right to control that which is his own, except such restrictions as might be imposed by the law of the land. * * *"

In its first report the Interstate Commerce Commission held that a Voting Stock Trust was *unnecessary* (R. 2264). In its modified report (R. 1295), it held that such a trust was "desirable" and provided for such a trust. It is not a question of "desirability", but *of power to impose an involuntary trust.* While Section 77 authorizes a *change* in the securities when consented to by the required number of creditors and approved by a court, *there is no statutory power granted* for either the majority creditors or the Interstate Commerce Commission or the court to *impose a trust involuntarily on those who do not desire to become parties thereto.* The minority cannot be compelled by the majority unless expressly authorized by the act even at the approval of "other members of the class" as held in this case (63 S. Ct. pp. 727, 752).

This point which is *not* discussed in the opinion, was also raised by us in the application for a Writ of Certiorari in the Chicago & Northwestern Railway cases which are pending in this court (Cases Nos. 37 and 38).

For the foregoing reasons we pray that a rehearing be granted.

Respectfully submitted,

MEYER ABRAMS,
Counsel for Israel A. Abrams, et al., Adjustment Mortgage Bondholders, Petitioners.

CERTIFICATE OF COUNSEL.

The undersigned, Meyer Abrams, counsel for the petitioners herein hereby certifies that the foregoing petition was prepared by him and that he is of the opinion that the petition is well founded in point of law and is not interposed for purposes of delay.

Dated at Chicago, Illinois, this 5th day of April, A. D. 1943.

MEYER ABRAMS.

MOTION FOR LEAVE TO SUPPLEMENT THE RECORD.

Now come Israel A. Abrams, *et al.*, (Appellees in case No. 13), and move for leave to supplement the record and to file instanter a certified copy of Exhibits A, B, C and D in connection with the petition for a rehearing.

Petitioners also move that the court may consider Exhibit E, which is not certified, but which is a true copy as per affidavit attached.

MEYER ABRAM
Counsel for Israel A. Abrams, et al., Adjustment Mortgage Bondholders, Appellees.

SUGGESTIONS IN SUPPORT OF MOTION.

The opinion in the instant case indicates that the court may consider the changed condition of the railroad and the only question is the *sufficiency* of the change. The documents desired to supplement the record showing the changed conditions are not for the purpose of speculating with the "normal year" as a basis for the allotment of new securities, but to show the actual increase in the valuation from earnings already received as a basis for the allotment of additional securities on account of the interest of $79,000,000. This may be considered. (*Atchison, T. & S. Ry. Co.* v. *United States*, 284 U. S. 248; *Board of Trade* v. *United States*, 314 U. S. 534, 537.)

It should also be noted that the entire proceedings are still *interlocutory*. The changed conditions may, therefore, be considered and as a matter of public policy should be weighed. This question whether changed conditions may be considered was decided by the Seventh Circuit in connection with the former appeal which was taken by

these Appellees in this cause involving the application for fees (Case No. 631, 314 U. S. 714). After this court decided the construction of the Statute differently from what was previously decided by the Seventh Circuit, (121 F. (2) 371) the Seventh Circuit reversed itself because of the changed conditions. The opinion is not yet published and was rendered on March 22, 1943 and is quoted in full:

Israel A. Abrams, *et al.*, Etc., *Appellants*,
vs.
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Rail-Road Company, *Appellees.*

To the United States Circuit Court of Appeals for the Seventh Circuit.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Hon. Evan A. Evans, Hon. J. Earl Major, Hon. Otto Kerner.

"In these appeals the court rendered an opinion on May 20, 1941, and the Supreme Court denied certiorari on November 10, 1941, and it appearing that on February 17, 1943, the appellants filed a petition for leave to file a Bill of Review or, in the alternative, to treat the petition as a petition for rehearing, and that on February 18, 1943, the court denied the prayer of the petition on the ground that it was without jurisdiction of the subject-matter.

It further appears that the appellants in their petition claim that in the opinion of May 20, 1941, this court misconstrued the statute in holding that the District Court was without jurisdiction to review the maximum allowance of 'nothing' citing *Reconstruction Finance Corp.* v. *Bankers Trust Co.*, decided by the Supreme Court on February 8, 1943, in which the Supreme Court said this Court erred in holding that the maximum fixed by the Commission is, in all circumstances, binding and unalterable.

It further appears that after the appellants had filed objections to the report of the Commission, the District Court refused to examine the evidence on the

theory that no matter what the evidence showed, the court was powerless to set aside the findings.

Since the proceedings and orders of a bankruptcy court are interlocutory until entry of the discharge, *Meyer* v. *Kenmore, etc.*, 297 U. S. 160; *Shulman* v. *Wilson, etc.*, 301 U. S. 172; *American, etc.* v. *Haines*, 117 F. (2) 574, and may be modified and rescinded before final decree, *Simmons Co.* v. *Grier Bros. Co.*, 258 U. S. 82, and if no intervening rights will be prejudiced, the court may grant a rehearing, *Wayne Gas Co.* v. *Owen Co.*, 300 U. S. 131, 137. No intervening rights being prejudiced, it is therefore adjudged that the order of February 18, 1943, be and the same is hereby vacated, a rehearing is hereby granted, the mandate heretofore issued is recalled, and the cause is reversed and remanded to the District Court with directions to examine the evidence and determine whether it supports the Commission's findings."

The *interlocutory* character of the proceedings and the fact that no rights of third persons have intervened is ground for the consideration of the supplemental record. (*Pfister* v. *Northern Illinois Finance Corp.*, 63 S. Ct. 133.)

In the *Atchison* case (284 U. S. 248), *supra*, the new matters showing the changed conditions *were presented by the petition for rehearing* and this court held it was not an "ordinary petition for rehearing" but in the nature of a supplemental bill, pressing a new and radically different situation. This court reversed the Commission because it failed to consider the economic changes. This is applicable to this case.

For the foregoing we suggest that the supplemental records should be considered in connection with the application for the rehearing, and that the rehearing should be allowed.

Respectfully submitted,

MEYER ABRAMS,
Counsel for Israel A. Abrams, et al., Adjustment Mortgage Bondholders. Appellees.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

MEYER ABRAMS, being first sworn on oath, deposes and says that after he obtained the certified copies attached hereto as Exhibits A, B, C, and D, he was furnished with a photostatic copy of Exhibit E by Henry A. Scandrett, one of the trustees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and that the copy attached as Exhibit E is a true and correct photostatic copy of the one he received from the debtor's trustee.

MEYER ABRAMS.

SUBSCRIBED and SWORN to before me this 1st day of April, A. D. 1943.

YETTA M. GERTLER,
Notary Public.

CERTIFICATE OF SERVICE OF COPIES OF PETITION ON COUNSEL FOR RESPONDENTS.

I, Meyer Abrams, counsel for the petitioner herein, hereby certify that copies of the foregoing petition and exhibits attached thereto were duly served on each of the attorneys of record by mailing printed copies thereof by regular United States mail, postage prepaid on April 5, 1943.

MEYER ABRAMS.

Chicago, Illinois,
April 5, 1943.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Accounting Department

Exhibit A

GENERAL BALANCE SHEET AS OF DECEMBER 31, 1942

ASSET SIDE

		Total Book Assets Dec. 31, 1942	Respondent's Own Issues Included	
	INVESTMENTS			
701	Road and equipment property:			
	Road			$968,722,330.50
	Equipment			148,319,631.31
	General expenditures			843,045.75
	Total			717,885,008.16
702	Improvements on leased property:			
	Road			240,799.69
	Equipment			149,089.06
	General expenditures			
	Total			389,889.75
704	Deposits in lieu of mortgaged property sold	$ 252,534.64	None	252,534.64
705	Miscellaneous physical property			6,136,107.30
706	Investments in affiliated companies:			
	(A) Stocks			5,169,643.87
	(B) Bonds			1,492,801.00
	(C) Unsecured notes			5,992,279.07
	(D) Investment advances			5,508,563.10
707	Other investments:			
	(A) Stocks			7,435.00
	(B) Bonds			1,000.00
	(C) Unsecured notes			36,599.61
	(D) Investment advances			2,250.00
	Total Investments			742,273,511.98
	CURRENT ASSETS			
708	Cash			52,107,651.82
709	Temporary cash investments			5,000,000.00
		Total Book Assets Dec. 31, 1942	Respondent's Own Issues Included	
711	Special deposits	$2,839,550.11	None	2,839,550.11
714	Net balance receivable from agents and conductors			4,026,965.47
715	Miscellaneous accounts receivable			8,468,707.22
716	Material and supplies			17,271,784.98
717	Interest and dividends receivable			18,856.21
718	Rents receivable			4,690.00
719	Other current assets			281,563.74
	Total Current Assets			90,019,750.95
	DEFERRED ASSETS			
720	Working fund advances			46,438.38
722	Other deferred assets			1,712,915.24
	Total Deferred Assets			1,759,348.32
	UNADJUSTED DEBITS			
723	Rents and insurance premiums paid in advance			28,861.60
725	Discount on funded debt			896,095.13
727	Other unadjusted debits			6,334,416.69
			Par Value of Holdings Dec. 31, 1942	
728	Securities issued or assumed - Unpledged		$63,000.00	
729	Securities issued or assumed - Pledged		26,090,800.00	
	Total Unadjusted Debits			6,658,773.42
	GRAND TOTAL			$840,711,384.19

LIABILITY SIDE

		Total Book Liability Dec. 31, 1942	Respondent's Holdings Included	
	STOCK			
751	Capital stock	$224,396,133.54	None	$224,396,133.54
	GOVERNMENTAL GRANTS			
754	Grants in aid of construction			2,582,047.46
	LONG-TERM DEBT			
		Total Book Liability Dec. 31, 1942	Respondent's Holdings Included	
755	Funded debt unmatured	$458,881,154.00	$20,820,000.00	438,061,154.00
758b	Long-term debt in default	20,109,462.50	6,213,800.00	13,895,662.50
756	Receivers' and trustees' securities	20,019,000.00	None	20,019,000.00
	Total Long-Term Debt			467,975,816.50
	CURRENT LIABILITIES			
758	Loans and bills payable			3,500,000.00
759	Traffic and car-service balances-Cr.			2,934,287.05
760	Audited accounts and wages payable			8,898,721.16
761	Miscellaneous accounts payable			263,851.73
762	Interest matured unpaid			1,001,273.64
764	Unmatured interest accrued			2,462,648.28
766	Unmatured rents accrued			304,699.34
767	Accrued tax liability			12,132,057.47
768	Other current liabilities			1,652,725.17
	Total Current Liabilities			32,950,246.84
	DEFERRED LIABILITIES			
769b	Matured interest in default			63,140,928.43
770	Adjustment mortgage bond interest accrued-Unmatured			116,124,795.05
770	Other deferred liabilities			6,496,642.29
	Total Deferred Liabilities			185,762,365.77
	UNADJUSTED CREDITS			
772	Premium on funded debt			44,005.81
775	Accrued depreciation - Road			2,859,400.97
775b	Accrued amortization of defense projects-Road			64,373.85
776	Accrued depreciation-Equipment			73,275,723.38
776b	Accrued amortization of defense projects-Equipment			188,667.13
777	Accrued depreciation-Miscellaneous physical property			80,125.39
778	Other unadjusted credits			14,414,840.98
	Total Unadjusted Credits			90,926,826.91
	CORPORATE SURPLUS			
779	Additions to property through income and surplus			595,440.67
780	Funded debt retired through income and surplus			43,104.16
	Total Appropriated Surplus			638,544.83
784	Profit and Loss, debit balance			*164,120,297.06
	Total Corporate Surplus (Deficit)			*163,482,052.23
	GRAND TOTAL			$840,711,384.19

* Denotes red figures.

◊ Includes following stocks pledged under the First and Refunding Mortgage and registered in the name of Ottiwell & Co., nominee of Chemical Bank & Trust Co., Trustee.

			Par Value	Book Value
White Sulphur Springs & Yellowstone Pk.Ry.Co.	Shares	1,530	153,000.00	173,645.07
Chicago, Milwaukee & Gary Ry. Co.	"	9,993	999,300.00	1.00
Chicago, Terre Haute & Southeastern Ry. Co.	"	40,457.20	4,045,720.00	404,572.00
Coulits, Chehalis & Cascade Ry.	"	697	69,700.00	133,909.26
Indiana Harbor Belt R.R. Co.	"	15,196	1,519,800.00	1,519,800.00

STATE OF ILLINOIS } ss
COUNTY OF COOK }

Walter V. Tilsen, being duly sworn, deposes and says that he is the Comptroller for the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has examined the foregoing balance sheet, and that the same is true and correct to the best of his knowledge and belief.

Walter V. Tilsen

Subscribed and sworn to before me this 10th day of February, A.D. 1943

E. D. Ottiwell
Notary Public

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Accounting Department

Exhibit B

INCOME ACCOUNT
MONTH OF DECEMBER 1942 AND TWELVE MONTHS ENDED DECEMBER 31, 1942

Acct. No.	Items	Month of December 1942	Twelve Months Ended Dec. 31, 1942
	I. OPERATING INCOME		
	(A) RAILWAY OPERATING INCOME:		
501	Railway operating revenues	$ 14,904,782.75	$179,897,273.70
531	Railway operating expenses	10,102,111.40	115,961,853.71
	Net revenue from railway operations	4,782,640.85	63,935,419.99
532	Railway tax accruals	2,899,000.00	29,701,000.00
	Railway operating income	1,883,640.85	34,234,419.99
	(B) RENT INCOME:		
504	Rent from locomotives	3,389.80	21,711.40
505	Rent from passenger-train cars	30,773.50	179,998.35
506	Rent from floating equipment	-	46.02
507	Rent from work equipment	5,194.78	12,107.02
508	Joint facility rent income	30,848.43	459,778.91
	Total rent income	70,100.51	673,639.68
	(C) RENTS PAYABLE:		
536	Hire of freight cars - Debit balance	* 184,004.12	481,731.26
537	Rent for locomotives	825.78	14,170.30
538	Rent for passenger-train cars	17,323.63	213,670.00
539	Rent for floating equipment	1,595.35	20,377.47
540	Rent for work equipment	30.93	982.61
541	Joint facility rents	489,273.25	3,448,880.86
	Total rents payable	328,992.07	4,318,831.30
	Net rents	* 258,891.76	* 3,644,731.62
	Net railway operating income	3,370,788.84	30,904,050.37
	II. OTHER INCOME		
509	Income from lease of road and equipment	21,414.63	299,284.09
510	Miscellaneous rent income	31,815.40	407,682.90
511	Miscellaneous nonoperating physical property	5,392.77	85,254.13
513	Dividend income	105,880.99	821,880.00
514	Income from funded securities	9,073.98	107,495.78
515	Income from unfunded securities and accounts	2,725.73	28,214.09
517	Release of premiums on funded debt	775.89	9,497.74
519	Miscellaneous income	807.63	4,841.11
	Total other income	182,811.16	1,184,190.84
	Total income	3,700,797.80	32,088,847.01
	III. MISCELLANEOUS DEDUCTIONS FROM INCOME		
543	Miscellaneous rents	812.00	84,747.28
544	Miscellaneous tax accruals	2,787.47	30,951.76
551	Miscellaneous income charges	4,734.74	122,271.27
	Total miscellaneous deductions	8,334.21	188,370.31
	Income available for fixed charges	3,692,463.59	31,900,476.70
	IV. FIXED CHARGES		
542	Rent for leased roads and equipment	93,074.81	1,109,213.48
540	Interest on funded debt:		
	(a) Fixed interest	1,059,194.19	12,789,014.30
547	Interest on unfunded debt	14,959.62	200,838.74
548	Amortization of discount on funded debt	1,776.96	21,134.47
	Total fixed charges	1,171,004.58	14,122,001.13
	Income after fixed charges	2,521,483.03	17,778,515.57
	V. CONTINGENT CHARGES		
546	Interest on funded debt:		
	(b) Contingent interest (Interest on Adjustment Mortgage Bonds)	781,973.73	9,143,684.65
	Net income	1,819,509.30	12,174,830.92

* Denotes red figures.

STATE OF ILLINOIS }
} ss
COUNTY OF COOK }

Walter V. Wilson, being duly sworn, deposes and says that he is the Comptroller for the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has examined the foregoing income account, and that the same is true and correct to the best of his knowledge and belief.

Subscribed and sworn to before me this 5th day of February, A.D. 1943.

Notary Public

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Accounting Department

Exhibit C

GENERAL BALANCE SHEET AS OF JANUARY 31, 1943

ASSET SIDE

Acct. No.				
	INVESTMENTS:			
701	Road and equipment property			
	Road			$568,826,119.42
	Equipment			148,323,503.22
	General expenditures			243,045.75
	Total			717,392,668.39
702	Improvements on leased property:			
	Road			240,799.84
	Equipment			149,089.86
	General expenditures			
	Total			389,889.70
703	Donations and grants			3,177,488.13
		Total Book Assets Jan. 31, 1943	Respondent's Own Issues Included	
704	Deposits in lieu of mortgaged property sold	$ 898,534.64	None	898,534.64
705	Miscellaneous physical property			6,136,633.00
706	Investments in affiliated companies:			
	ϕ (A) Stocks			5,169,643.87
	(B) Bonds			1,487,403.00
	(C) Unsecured notes			5,992,279.07
	(D) Investment advances			5,516,410.04
707	Other investments:			
	(A) Stocks			7,435.00
	(B) Bonds			1,000.00
	(C) Unsecured notes			36,799.61
	(D) Investment advances			2,000.00
	Total Investments			739,212,806.86
	CURRENT ASSETS			
708	Cash			58,088,823.74
709	Temporary cash investments			5,000,000.00
		Total Book Assets Jan. 31, 1943	Respondent's Own Issues Included	
711	Special deposits	$3,038,550.82	None	3,038,550.82
714	Net balance receivable from agents and conductors			5,998,494.11
715	Miscellaneous accounts receivable			9,281,215.19
716	Material and supplies			17,357,348.37
717	Interest and dividends receivable			31,731.97
718	Rents receivable			14,380.00
719	Other current assets			315,736.60
	Total Current Assets			97,125,860.00
	DEFERRED ASSETS			
720	Working fund advances			45,961.99
722	Other deferred assets			1,717,172.39
	Total Deferred Assets			1,763,134.38
	UNADJUSTED DEBITS			
723	Rents and insurance premiums paid in advance			31,641.82
725	Discount on funded debt			894,383.65
727	Other unadjusted debits			6,839,614.68
			Par Value of Holdings Jan. 31, 1943	
728	Securities issued or assumed - Unpledged		$ 943,000.00	
729	Securities issued or assumed - Pledged		86,051,800.00	6,765,840.15
	Total Unadjusted Debits			
	GRAND TOTAL			$864,865,840.79

LIABILITY SIDE

Acct. No.		Total Book Liability Jan. 31, 1943	Respondent's Holdings Included	
	STOCK			
751	Capital stock	$220,396,133.54	None	$220,396,133.54
	LONG TERM DEBT			
		Total Book Liability Jan. 31, 1943	Respondent's Holdings Included	
765	Funded debt unmatured	$452,134,194.00	$20,820,000.00	$431,314,194.00
765½	Debt in default	23,609,462.50	6,214,800.00	17,394,662.50
766	Receivers' and trustees' securities	1,075,000.00	None	1,075,000.00
766½	Equipment obligations	23,330,529.93	None	21,130,529.93
	Total Long Term Debt			473,114,386.43
	CURRENT LIABILITIES			
779	Traffic and car-service balances-Cr.			2,879,343.19
780	Audited accounts and wages payable			6,484,333.79
781	Miscellaneous accounts payable			279,373.61
782	Interest matured unpaid			999,196.65
784	Unmatured interest accrued			192,621.89
786	Unmatured rents accrued			303,896.57
787	Accrued tax liability			14,909,411.58
788	Other current liabilities			1,965,979.15
	Total Current Liabilities			30,175,916.23
	DEFERRED LIABILITIES			
769½	Interest in default			66,373,785.83
770	Adjustment mortgage bond interest accrued-Unmatured			116,988,766.77
770	Other deferred liabilities			4,361,376.98
	Total Deferred Liabilities			187,682,531.58
	UNADJUSTED CREDITS			
772	Premium on funded debt			43,279.72
774½	Accrued amortization of defense projects-Road			71,496.55
776	Accrued depreciation-Road and equipment			76,918,480.88
776½	Accrued amortization of defense projects-Equipment			210,708.16
777	Accrued depreciation-Miscellaneous physical property			86,877.19
778	Other unadjusted credits			14,271,045.21
	Total Unadjusted Credits			91,901,875.71
	SURPLUS			
790	Appropriated surplus			43,108.16
786	Earned surplus, debit balance			*162,385,088.82
	Total Surplus (Deficit)			*162,342,980.66
	GRAND TOTAL			$864,865,840.79

* Denotes red figures.

ϕ Includes following stocks pledged under the First and Refunding Mortgage and registered in the name of Ottiwell & Co., nominee of Chemical Bank & Trust Co., Trustee.

			Par Value	Book Value
White Sulphur Springs & Yellowstone Pk.R.Co.	Shares	1,530	153,000.00	173,845.07
"	"	9,993	999,300.00	1.00
Chicago, Milwaukee & Gary Ry. Co.	"	40,457.20	4,045,720.00	404,572.00
Chicago, Terre Haute & Southeastern Ry. Co.	"	697	69,700.00	133,909.26
Covlitz, Chehalis & Cascade Ry.	"	15,198	1,519,800.00	1,519,800.00
Indiana Harbor Belt R.R. Co.				

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Walter J. Wilson, being duly sworn, deposes and says that he is the Comptroller for the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has examined the foregoing balance sheet, and that the same is true and correct to the best of his knowledge and belief.

Walter J. Wilson

Subscribed and sworn to before me this 24th day of March, A.D. 1943

Notary Public

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Accounting Department

INCOME ACCOUNT
MONTH OF JANUARY 1943

Exhibit D

Acct. No.	Items	Amount
	I. OPERATING INCOME	
	(A) RAILWAY OPERATING INCOME:	
501	Railway operating revenues	$16,806,387.14
531	Railway operating expenses *	9,887,272.83
	Net revenue from railway operations	6,919,114.31
532	Railway tax accruals	2,775,000.00
	Railway operating income	3,744,114.31
	(B) RENT INCOME:	
503	Hire of freight cars - Credit balance	34,425.16
504	Rent from locomotives	4,170.14
505	Rent from passenger-train cars	20,031.09
507	Rent from work equipment	667.76
508	Joint facility rent income	32,873.36
	Total rent income	92,167.47
	(C) RENTS PAYABLE:	
537	Rent for locomotives	600.00
538	Rent for passenger-train cars	13,217.44
539	Rent for floating equipment	* 806.81
540	Rent for work equipment	3.34
541	Joint facility rents	342,253.32
	Total rents payable	355,267.31
	Net rents	* 163,099.84
	Net railway operating income	3,581,014.47
	II. OTHER INCOME	
509	Income from lease of road and equipment	15,067.42
510	Miscellaneous rent income	40,227.84
511	Miscellaneous nonoperating physical property	25,866.94
513	Dividend income	3,262.01
514	Income from funded securities	9,053.37
515	Income from unfunded securities and accounts	3,498.24
517	Release of premiums on funded debt	726.09
519	Miscellaneous income	287.12
	Total other income	97,985.03
	Total income	3,678,999.50
	III. MISCELLANEOUS DEDUCTIONS FROM INCOME	
543	Miscellaneous rents	4,137.80
544	Miscellaneous tax accruals	3,181.95
551	Miscellaneous income charges	3,585.53
	Total miscellaneous deductions	10,809.68
	Income available for fixed charges	3,668,189.84
	IV. FIXED CHARGES	
542	Rent for leased roads and equipment	91,913.34
546	Interest on funded debt:	
	(a) Fixed interest	1,074,278.52
547	Interest on unfunded debt	496.31
548	Amortization of discount on funded debt	1,772.17
	Total fixed charges	1,168,460.34
	Income after fixed charges	2,499,729.50
	V. CONTINGENT CHARGES.	
546	Interest on funded debt:	
	(b) Contingent interest (Interest on Adjustment Mortgage Bonds)	761,973.78
	Net Income	1,737,760.78

* Denotes red figures

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Walter V. Kilmer being duly sworn, deposes and says that he is the Comptroller for the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has examined the foregoing income account; and that the same is true and correct to the best of his knowledge and belief.

Subscribed and sworn to before me
this [illegible] day of March A.D. 1943

Notary Public

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees

SEGREGATION OF SYSTEM INCOME TO LINES WEST, PIECES OF LINES EAST, AND PLEDGED SECURITIES UPON WHICH FIRST AND REFUNDING MORTGAGE IS A FIRST LIEN

Exhibit E

ESTIMATED INCOME AVAILABLE FOR FIXED CHARGES, AND INCOME AVAILABLE FOR INTEREST ON MORTGAGE BONDS AFTER OTHER INTEREST, RENTS AND CHARGES AUTHORIZED BY COURT FOR PAYMENT AND AFTER NET OF CAPITAL EXPENDITURES AND PAYMENTS IN REDUCTION OF DEBT

YEAR 1942
(SEE FOOTNOTES)

Line No.	Items	Amount
1	LINES WEST	
2	Railway Operating Revenues	
3	Freight (See Footnotes 2 and 3)	$37,272,982
4	Passenger	3,367,015
5	Mail	305,937
6	Express	449,499
7	All Other	1,446,955
8	Total Railway Operating Revenues	42,826,388
9	Railway Operating Expenses	
10	Maintenance of Way and Structures	5,632,705
11	Maintenance of Equipment	5,497,610
12	Traffic	469,655
13	Transportation	10,748,252
14	Miscellaneous Operations	474,961
15	General	853,305
16	Transportation on Lines East of Material used on Lines West - at out-of-pocket cost	Dr. 140,588
17	Transportation on Lines West of Material used on Lines East - at out-of-pocket cost	Cr. 461,747
18	Total Railway Operating Expenses	23,553,472
19	Income Items	
20	Railway Tax Accruals:	
21	Ordinary Taxes	1,449,503
22	Federal Income Taxes	461,382
23	Carriers Employment Tax	450,181
24	Railroad Unemployment Insurance Tax	[illegible]
25	Total Taxes	2,361,368
26	Equipment Rents - Net Debit	2,097,341
27	Joint Facility Rents - Net Debit	281,367
28	Total Income Items	4,551,076
29	Net Railway Operating Income	14,779,840
30	Other Income	81,649
31	Total Income	14,861,489
32	Miscellaneous Deductions from Income	23,625
33	Income Available for Fixed Charges	14,837,864
34	Pieces of Lines East	
35	Railway Operating Revenues	6,306,850
36	Railway Operating Expenses	3,776,500
37	Transportation of Company Material: Haul by Pieces of Lines East of other lines' Material less other lines' haul	
38	of Pieces of Lines East Material - at out-of-pocket cost	Cr. 48,300
39	Railway Tax Accruals:	
40	Ordinary Taxes	172,900
41	Federal Income Taxes	
42	Carriers Employment Tax	74,900
43	Railroad Unemployment Insurance Tax	74,500
44	Equipment and Joint Facility Rents	647,400
45	Net Railway Operating Income	2,258,500
46	Other Income	15,456
47	Total Income	2,273,956
48	Miscellaneous Deductions from Income	27,651
49	Income Available for Fixed Charges	2,246,305
50	Income (NON-OPERATING) Pledged under 1st MORTGAGE	
51	Dividends on Indiana Harbor Belt Stock	182,376
52	Interest on C.T.H.& S.A. Bonds	75,750
53	All Other	1,491
54	Total	259,617
55	Add Thereof as ABOVE	
56	FEDERAL INCOME TAXES	4,999,576
57	INCOME AVAILABLE FOR FIXED CHARGES	12,154,677
58	Deduct Interest (other than Mortgage Bond Interest) and Rents authorized by Court for payment:	
59	(1) Portion of Interest on Government Loans:	
60	R.F.C.	76,220
61	P.W.A. - Assigned to R.F.C.	2,197
62	(2) Interest on overcharge claims, special assessments, tax adjustments, etc.	2,000
63	(3) Amortization of discount on Funded Debt	1,288
64	Total Deductions	81,705
65	INCOME AVAILABLE FOR CAPITAL EXPENDITURES, PAYMENTS IN REDUCTION OF DEBT,	
66	AND INTEREST ON MORTGAGE BONDS	12,068,444
67	CAPITAL EXPENDITURES AND PAYMENTS IN REDUCTION OF DEBT:	
68	(1) Additions and Betterments	1,489,709
69	(2) Portion of Payment account P.W.A. Loan -	
70	Assigned to R.F.C.	30,193
71	(3) Portion of Payment account R.F.C. Loans	23,313
72	(4) Total Capital Expenditures and Payments in reduction of Debt	1,518,215
73	Less -	
74	(a) Equipment Depreciation Charges in Operating Expenses	296,757
75	(b) Road Depreciation, Amortization and Retirement Charges in Operating Expenses and Income	1,625,411
76	(c) Salvage from Property Retired	218,350
77	Total Credits to (4)	2,100,518
78	NET OF CAPITAL EXPENDITURES AND PAYMENTS IN REDUCTION OF DEBT	Cr. 582,298
79	INCOME AVAILABLE FOR INTEREST ON MORTGAGE BONDS	13,250,702

1	LINES WEST	
2	Railway Operating Revenues	
3	Freight (See Footnotes 2 and 3)	$37,222,982
4	Passenger	3,367,015
5	Mail	905,937
6	Express	645,459
7	All Other	1,485,795
8	Total Railway Operating Revenues	43,626,188
9	Railway Operating Expenses	
10	Maintenance of Way and Structures	5,632,725
11	Maintenance of Equipment	5,497,610
12	Traffic	469,655
13	Transportation	10,748,259
14	Miscellaneous Operations	474,962
15	General	853,325
16	Transportation on Lines East of Material used on Lines West - at out-of-pocket cost	Dr. 140,088
17	Transportation on Lines West of Material used on Lines East - at out-of-pocket cost	Cr. 461,767
18	Total Railway Operating Expenses	22,354,472
19	Income Items	
20	Railway Tax Accruals:	
21	Ordinary Taxes	1,449,503
22	Federal Income Taxes	
23	Carriers Employment Tax	451,382
24	Railroad Unemployment Insurance Tax	450,483
25	Total Taxes	2,351,368
26	Equipment Rents - Net Debit	2,060,341
27	Joint Facility Rents - Net Debit	281,367
28	Total Income Items	4,693,076
29	Net Railway Operating Income	14,779,640
30	Other Income	81,849
31	Total Income	14,861,489
32	Miscellaneous Deductions from Income	23,525
33	Income available for Fixed Charges	14,837,964
34	Lines of Lines East	
35	Railway Operating Revenues	6,906,800
36	Railway Operating Expenses	3,726,900
37	Transportation of Company Material: Haul by Lines of Lines East of other Lines' Material less other lines' haul of Lines of Lines East Material - at out-of-pocket cost	Cr. 48,300
38	Railway Tax Accruals:	
39	Ordinary Taxes	172,900
40	Federal Income Taxes	
41	Carriers employment Tax	74,900
42	Railroad Unemployment Insurance Tax	74,500
43	Equipment and Joint Facility Rents	647,400
44	Net Railway Operating Income	2,358,500
45	Other Income	15,455
46	Total Income	2,373,955
47	Miscellaneous Deductions from Income	27,653
48	Income Available for Fixed Charges	2,346,302
49	INCOME FROM SECURITIES PLEDGED UNDER THE MORTGAGE	
50	Dividends on Indiana Harbor Belt Stock	182,376
51	Interest on C.T.H.& S.E. Bonds	75,750
52	All Other	7,263
53	Total	265,389
54	ALL PAYMENT OF RENTS	
55	FEDERAL INCOME TAXES	5,888,576
56	INCOME AVAILABLE FOR FIXED CHARGES	12,750,079
57	Deduct Interest (other than Mortgage Bond Interest) and Rents authorized by Court for payment:	
58	(1) Portion of Interest on Government Loans:	
59	R.F.C.	76,222
60	P.W.A. - Assigned to R.F.C.	2,157
61	(2) Interest on overcharge claims, special arrangements, tax adjustments, etc.	2,003
62	(3) Amortization of Discount on Funded Debt	1,283
63	Total Deductions	81,665
64	INCOME AVAILABLE FOR CAPITAL EXPENDITURES, PAYMENTS IN REDUCTION OF DEBT, AND INTEREST ON MORTGAGE BONDS	12,668,414
65	CAPITAL EXPENDITURES AND PAYMENTS IN REDUCTION OF DEBT:	
66	(1) Additions and Betterments	1,464,706
67	(2) Portion of Payment account P.W.A. Loan Assigned to R.F.C.	10,191
68	(3) Portion of Payment account R.F.C. Loans	23,373
69	(4) Total Capital Expenditures and Payments in reduction of Debt	1,518,270
70	Less -	
71	(a) Equipment Depreciation Charges in Operating Expenses	256,757
72	(b) Road Depreciation, Amortization and Retirement Charges in Operating Expenses and Income	1,625,411
73	(c) Salvage from Property Retired	218,350
74	Total Credits to (4)	2,100,518
75	NET OF CAPITAL EXPENDITURES AND PAYMENTS IN REDUCTION OF DEBT	Cr. 582,248
76	INCOME AVAILABLE FOR INTEREST ON MORTGAGE BONDS	13,250,702

FOOTNOTES:

1 Does not include an allocation of any income to the Milwaukee derived from the lease of the Terre Haute lines upon which the First and Refunding Mortgage has a first lien on the Leasehold interest.

2 Freight revenue determined from waybills for the entire year.

3		Year 1942	
	Local to Lines West	(Lines East Proportion)	$ 8,264,402 (Lines West Proportion)
	Interchange with Lines East:	$ 7,871,172	$15,805,488
	Eastbound	6,205,322	13,153,032
	Westbound	$14,076,494	28,958,520
	Total Interchange Traffic		$37,222,982
	Total Lines West Revenue		

Office of Assistant to Trustee
Chicago, Ill., March 29, 1943.